

REMARKS

35 U.S.C. § 112, second paragraph

In the Office Action, Claims 20-22, 26-34, 37, and 39-44 are rejected under 35 U.S.C. § 112, second paragraph, as failing to comply with the written description requirement. The Examiner objects to the amendment of claim 20 that limits the bonding points to a “plurality of points on said first surface and a plurality of high points on the nonwoven layer.” Though, Applicants respectfully traverse this rejection (support may be found in paragraph [0066] of the application as originally filed), Applicants have deleted this limitation to expedite allowance of the claimed invention.

Rejections based upon 35 U.S.C. § 103(a)

In the Office Action, Claims 20-22, 26-28, 30-32, 34, 39, 40, 41, 43, and 44 were rejected under 35 U.S.C. § 103(a). Claims 29 (new Claim 45), 33 (Canceled), 37 (new Claim 48), and 42 (new Claim 50) were not rejected based on the prior art and are rewritten in independent form including all the limitations of the independent and intervening claims, except as amended in response to the 35 U.S.C. § 112, second paragraph rejection as described above. New Claim 45 is supported by Claims 29, New Claim 48 is supported by Claim 37, and new Claim 50 is supported by Claim 42. Claims 30-33 were canceled because they were dependent upon previously canceled claim 23.

In the Office Action, the Examiner states in her Response to Arguments that the argument that Nissing does not teach bonding a creped nonwoven to an elastic film is not persuasive because Nissing’s film layer is made of polypropylene or polyethylene, which are also used to make up the film layer of the present invention. However, it is well known in the art that polypropylene or polyethylene may be

inelastic. Further, an elastic film would not function properly in the invention of Nissing. In the Nissing laminate, the film layer or second layer "constrains extension of the first layer." See Nissing, Abstract and column 7, lines 21-24, for example. This is an essential aspect of the invention. If the second layer of the laminate of Nissing was elastic then it would not constrain the extension of the first layer as considered essential in the composite. Constraining the extension of the first layer of the Nissing laminate produces the desired result of deforming the first layer, such as by buckling or puckering.

"The mere fact that references can be . . . modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." Manual of Patent Examining Procedure ("MPEP") § 2143.01 III. There is no suggestion in the prior art or in the general knowledge of one skilled in the art to modify the disclosure of Nissing. Further, "[i]f [the] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." MPEP 2143.01 V. In the specification of Nissing it is clear that the second layer of the composite of Nissing has to have less extensibility than the first layer. If the second layer is modified to be an elastic layer, then it would render the composite of Nissing unsatisfactory for its intended purpose because the second layer would not constrain the extension of the first layer. The composite of Nissing is intended to buckle or pucker when the first layer is wet extended, this would not occur.

A *prima facie* case of obviousness has not been established. "If the proposed modification . . . of the prior art would change the principle of operation of the prior art invention being modified, the teachings of the references are not sufficient to render the claims *prima facie* obvious. MPEP §2143.02 VI. Applicants respectfully

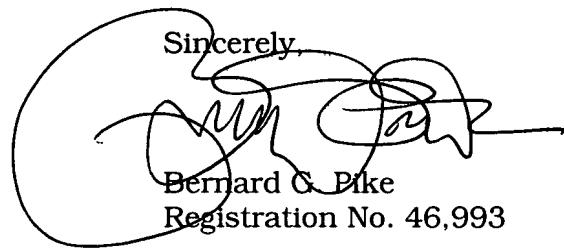
submit that for the above reasons, the modification of the prior art proposed by the examiner would change the principle of operation of Nissing.

The extension of the first layer in the laminate of the present invention would result in reducing the degree of creping of the first layer of the composite. The composite of the present invention may be creped in a wet or dry state, while the composite of Nissing is deformed or buckled only when wet. It is the wet extensibility of the first layer and the inelastic nature of the second layer of the composite of Nissing that results in buckling of the first layer. This result is the opposite the intended purpose of the laminates of Nissing. Reconsideration of the rejections under 35 U.S.C. § 112, second paragraph, and 35 U.S.C. § 103(a) is respectfully requested.

CONCLUSIONS

Applicants believe that they have fully addressed each basis for the rejection in the Office Action. Reconsideration of the claims of the subject application and issuance of a Notice of Allowability is respectfully requested. Should the Examiner have any remaining concerns, he is requested to contact the undersigned at the telephone number given below so that the concerns may be resolved with issuance of an additional Office Action.

No fees beyond the concurrently paid filing fees for this application are believed due for this *Response to Office Action*. Nonetheless, authorization to charge deposit account No. 20-1507 is given herein should fees be due.

Sincerely,

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